

DOCKET NO.: **OO-0070
Application No.: 10/035,172
Office Action Dated: July 28, 2008

PATENT

Amendments to the Drawings

The attached sheet(s) of drawings includes changes to Fig(s) 3. The sheet(s), which includes Fig(s) 3, replaces the original sheet(s) including Fig(s) 3.

Attachment: Replacement Sheet(s)

REMARKS

Claims 1-32 are pending in this application. Claims 1-18 and 29-32 are subject to restriction and/or election. Claims 19-28 have been examined.

Claim 23 stands objected to as containing language which is unclear.

Claims 19-21 and 24-27 stand rejected under 35 USC § 102(e) as being anticipated by Logan, US Publication 2002-0120925 (“Logan”).

Claim 22 stands rejected under 35 USC § 103(a) as being unpatentable over Logan.

Claim 23 stand rejected under 35 USC § 103(a) as being unpatentable over Logan in view of Tsuchiya et al (“Tsuchiya”).

Claim 28 stands rejected under 35 USC § 103(a) as being unpatentable over Logan in view of Fisher et al, US Patent 5,835,896 (“Fisher”).

The restriction requirement, the objection, and the rejections are discussed below. The examiner is respectfully urged to reconsider the application and withdraw the rejections in view of the above amendment and the following remarks. Should the examiner have any questions or concerns that might be efficiently resolved by way of a telephonic interview, the examiner is invited to call applicants’ undersigned attorney, Jon M. Isaacson, at **206-332-1102**.

Examiner Interview Summary

Applicant’s undersigned representative would like to thank Examiner Nguyen-Ba for the opportunity to discuss the Office Action during a telephonic interview on October 28, 2008. The priority date of the Logan reference was discussed, but no agreement was reached. Applicants contended that the examiner has the burden of showing that the Logan reference is entitled to an earlier date under 102(e) by showing that the subject matter cited in the rejection is fully supported by the applications to which Logan claims priority. (See applicant’s arguments below.)

Restriction requirement and Election

Applicants elect Group II (claims 19-28) without traverse. Claims 1-18 and 29-32 have been withdrawn without prejudice. Applicants reserve the right to re-file the withdrawn claims in a later application.

Claim objection

Claim 23 stands objected as the examiner noted that “the standard DVD specification,” as recited, is unclear. Claim 23 is presently amended to replace “the minimum transmission set forth in the standard DVD specification” with “a predetermined minimum transmission.” Applicants submit that the claim is now clear and request withdrawal of the objection.

Citation to Logan as prior art

Applicants respectfully submit that Logan is not prior art. Applicants draw the examiner’s attention to the fact that the Logan reference was filed January 29, 2002, which is after applicants’ filing date of January 4, 2002. Further, while applicants reserve the right to antedate any reference, applicants note that the examiner conceded that the present application is entitled to a priority date of September 14, 2001 based on the provisional application to which the present application claims priority. As such, Logan alone does not qualify as prior art under 35 USC § 102(e).

The Logan reference is a CIP of a parent application and claims priority to three provisional applications, all of which were filed before applicants’ filing date. Logan qualifies as a reference under 35 USC § 102(e) only if the subject matter of the rejection is disclosed in one of the prior-filed applications. (MPEP § 2136.03.) As to the provisional applications, Logan’s 102(e) critical reference date “is entitled to the benefit of the filing date of a provisional application...if the provisional application(s) properly supports the subject matter relied upon to make the rejection in compliance with 35 U.S.C. 112, first paragraph.” (MPEP § 2136.03, section III; emphasis in original.) As to the non-provisional application, “the subject matter used in the rejection must be disclosed in the earlier-filed application in compliance with 35 U.S.C. 112, first paragraph, *in order for that subject matter to be entitled to the earlier filing date* under

35 U.S.C. 102(e).” (MPEP § 2136.03, section IV; emphasis added.) Thus, applicants submit that, until it is shown that the subject matter of the rejection is fully supported by the priority documents, Logan is not entitled to the earlier date as a 102(e) reference. As the examiner has not demonstrated that the subject matter of the rejections is fully supported in any of the Logan priority documents, applicant submit that Logan is not prior art. Accordingly, applicants submit that the examiner’s use of the Logan reference as prior art under 35 USC § 102(e) is improper.

Conclusion

Applicants believe that the present remarks are responsive to each of the points raised by the examiner in the official action, and submit that claims 19-28 of the application are in condition for allowance. Favorable consideration and passage to issue of the application at the examiner’s earliest convenience is earnestly solicited.

Respectfully submitted,

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